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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,224	02/15/2001	J. David Martin	BHAM-01001US0 SRM/KFK	2546
23910	7590	03/23/2005	EXAMINER	
FLIESLER MEYER, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111			RUHL, DENNIS WILLIAM	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/784,224

Applicant(s)

MARTIN, J. DAVID

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/17/01.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4,6,15, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 4, applicant is reciting that the communications device of claim 1 is a server. This then is reciting that the server of claim 1 hosts another server? This makes no sense to the examiner. Is applicant reciting that the server of claim 1 is a HTTP server? The examiner does not see how the communications device (i.e. a modem) can be a server as claimed. The scope of this claim is not clear to the examiner

For claim 15, the language "said supply agreement including at on a building design element" is not clear and reads poorly. This language makes no sense and it is not known what this means.

For claim 23, there is no antecedent basis for "the designed device". Should this be "designed home"? No designed device of any kind has been claimed so it is not clear what this refers to.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-24,26,27,31-43, are rejected under 35 U.S.C. 102(b) as being anticipated by Fino et al. (5689705).

For claims 1,5,7,35,39,41, Fino discloses a system and method for allowing a potential purchaser of a home (anybody) to review building designs and create a customized home by choosing from various building options. Fino discloses a computer/server 25 with a communication device 24. The claimed design device is the Options Module of Fino that allows options to be selected by the user of the system. The user interface device is the monitor/display of the computer/server 25. The user interface is the software/programming that creates the various screens shown in the figures. This allows for the selection, arrangement, and design as claimed. The ordering mechanism is the Contract Module of Fino.

For claims 2,36, Fino discloses manufactured homes as claimed. With respect to the recitations about the ordering mechanism, they are method limitations directed to the intended manner of use for the system and do not define any kind of structure that is not found in Fino; therefore, Fino anticipates what is claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See

*In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

For claims 3,37, Fino discloses a Finance Module that communicates with the user and can calculate the buying power of the user as claimed.

For claims 4,38, Fino discloses the user interface as being an application stored on a computer as claimed. As best understood by the examiner, Fino discloses the claimed type of communications device because Fino discloses a server 25. The examiner does not consider the name of the server to be reciting any specific type of structure, because the claimed hypertext transfer protocol is not a structural element of the system but rather is the programming language used for the transfer of data.

For claims 6,40, Fino discloses various screens for the display of data. Screens are pages as claimed. The examiner does not consider the name of the page to be reciting any specific type of structure, because the claimed page is not even a structural element of the system but rather is an intangible thing (a collection of data to be displayed).

For claims 8,42, the design features (type of data saved) are considered to be non-functional descriptive material that does not serve as a limitation. *In re Gulack*, 217 USPQ 401 (CAFC 1983). However, Fino discloses the cost associated with the features. As an example, see figure 3B. Fino also clearly shows availability of features. If they are available you can see them, if not then they are not shown.

For claims 9,43, this is another method limitation and is satisfied by the fact that the features are present in the system of Fino. The options data had to get entered

somehow and a person (a vendor) was responsible for them being saved on the server 25.

For claims 10,11,35, Fino discloses a system as claimed. The database processor is the server 25. The user interface is the software/programming that creates the various screens shown in the figures. The communication link is the networking of computers between regional offices, sales offices, corporate offices, and design centers that allows transfer of any kind of data (sales, buyer data, homes data, etc.). See column 7, lines 5-55. For these offices to be able to communicate with each other a communication link is inherently required. The central server is the computer of any one of the offices that are networked together. The recitation of what the entries in the database are comprised of are non-functional descriptive material that does not serve as a limitation. *In re Gulack*, 217 USPQ 401 (CAFC 1983).

For claim 12, the examiner considers the server of Fino to be a Web server. A server is a server and the term "Web" lends no further structure to the term "server". Fino discloses various screens for the display of data. Screens are pages as claimed. The examiner does not consider the name of the page to be reciting any specific type of structure, because the claimed page is not even a structural element of the system but rather is an intangible thing (a collection of data to be displayed).

For claims 13,14, for the system to be able to transfer data to and from the various offices discussed in column 7, some kind of data transfer protocol is required. The term "Internet transfer protocol" is considered satisfied by Fino. The Internet is simply a bunch of connected computers and this is what Fino discloses. This is also a

recitation directed to the type programming language used for the transfer of data, which is not a structural limitation, but rather is an intangible thing.

For claims 15,20,21, this claim is directed to the method of use for the system where Fino is fully capable of operating as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

For claims 16-18, Fino discloses a manufacturer of homes. A manufacturer of homes is a building component manufacturer, a property lot developer, and a building element designer as claimed. These names define nothing to the system of claim 10 and are satisfied by Fino.

For claim 19, the order processor is the Contract Module of Fino and operates as claimed.

For claim 22, the claimed finance processor is considered to be the Finance Module of Fino.

For claim 23, Fino discloses a method as claimed. A user can select from options (features) as claimed by using the Options Module. The inputs are made via a user interface (computer). A home manufacturer is inherently selected as claimed

because you are reviewing home models of a manufacturer. With respect to the selecting of a contractor to prepare a site for placement of the home, this is inherently done. A contractor must be selected to make the foundation for the home at some point in the process so that the home can then be built. The ordering of parts and labor to construct the home is also inherently part of the process.

For claim 24, Fino discloses that the buying power of the purchaser can be calculated. See the disclosure relating to the Finance Module that performs this method step.

For claim 26, Fino discloses the claimed method. Fino discloses that building layouts and available features are saved and selectable by a potential home purchaser. This is done in the Options Module and the Plan Selection Module of Fino. The database must be updated as claimed so that the features and plan layouts can be stored. The user then selects the layout they desire and any options they desire. The chosen options are preferred options.

For claim 27, see figures 2A-2E, which show the displaying of a drafted design.

For claim 31-33, it is disclosed that the Contract Module can print a contract. A contract is an order to construct the building. The order is then sent to a vendor (the builder).

For claim 34, see column 6, lines 15-24 where the claimed limitation is disclosed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25,28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fino et al. (5689705) in view of Barad et al. (6206750). Fino discloses the invention substantially as claimed.

For claims 25,28-30, Fino does not disclose that the step of receiving inputs is done by the use of a Web site and a HTTP server. Fino discloses the use of a computer/server that may be networked to other offices and their computers for the selection of home designs and options. Fino does not disclose that the reviewing of home layouts and selection of features/options is done by a Web site as claimed. Barad discloses a method for ordering of customized toys via the Internet and a Web page. Users can log onto the web site, choose a toy and customize the toy by choosing from available features/options. Barad teaches the ordering of a custom article that was customized by the user via the Internet. Barad also discloses in the figures the well-known Hypertext Transfer Protocol, which is the standard for Internet use. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fino by providing a Web page for the selection and customization of the homes that are available for purchase. The use of HTTP necessarily follows with the modification of Fino. Barad discloses the use of the Internet and a Web page for the purchasing of an article that can be customized, and one of ordinary skill in the art would have been motivated to provide Fino with this feature. This would allow a potential customer to review and select home layouts and available options, from

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anywhere, and would not require them to actually visit a sales office. This would then allow the method of Fino to be available to anyone that has Internet access and results in a much more user-friendly format.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Loveland (6829584), Pickens (6345258), and Goldman (4149246), Dworkin (4992940), and Hartman (6236409) disclose inventions related to building design or relate to the customization of an ordered article.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**DENNIS RUHL**  
PRIMARY EXAMINER